

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	Confirmation No.: 5309
Gary K. Michelson	)	
Serial No.: 10/802,906	)	Group Art Unit: 3775
Filed: March 17, 2004	)	Examiner: Matthew J. Lawson
For: ORTHOPEDIC IMPLANT WITH	)	
LOCKING ELEMENT (as amended))	)	

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(b)**

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(b), Applicant brings to the attention of the Examiner the documents listed on the attached Form PTO/SB/08. This Information Disclosure Statement is being filed before the mailing date of a first Office Action on the merits for the above-referenced application.

Copies of the listed non-U.S. patent documents are enclosed herewith. Applicant respectfully requests that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

The present application is a continuation of Application No. 10/098,991, filed March 15, 2002, now U.S. Patent No. 7,077,844; which is a divisional of Application No. 09/669,912, filed September 26, 2000, now U.S. Patent No. 6,383,186; which is a divisional of U.S. Application No. 09/022,344, filed February 11, 1998, now U.S. Patent No. 6,139,550; upon which Applicant relies for the benefits provided in 35 U.S.C. § 120. Application No. 09/022,344 claims priority from provisional Application No. 60/037,139, filed February 11, 1997.

As stated in the Information Disclosure Statement filed on June 9, 2009, U.S. Patent No. 6,916,320 (which also claims priority to provisional Application No.

60/037,139) was the subject of litigation in the U.S. District Court for the Eastern District of Pennsylvania; Civil Action No. 2:06-cv-04248-JG, hereinafter referred to as Litigation 3. Litigation 3 was settled with the defendant dismissing their claim and defense of invalidity with prejudice. Documents from Litigation 3 which are being submitted herewith are identified by the designation "Lit. 3" located in the column for the Examiner's initials on the attached Form PTO/SB/08.

The Information Disclosure Statement filed on June 9, 2009 also stated that U.S. Patent Nos. 6,916,320; 6,428,542; 6,592,586; 6,936,050; 6,936,051; and 6,969,390 (all of which claim priority to provisional Application No. 60/037,139) are the subjects of litigation in the U.S. District Court for the District of Southern California; Civil Action No. 08 CV 1512 LAB AJB, hereinafter referred to as Litigation 4. Documents from Litigation 4 which are being submitted herewith are identified by the designation "Lit. 4" located in the column for the Examiner's initials on the attached Form PTO/SB/08. In addition, Applicant is submitting a reference the defendant asserts is material to the patentability of the '586 patent (marked "Lit. 4").

The Information Disclosure Statement filed on June 9, 2009 also stated that the defendant from Litigation 4 also requested inter partes reexamination of the '542 (Reexam Control No. 95/000,446, hereinafter referred to as Reexam 1) and '050 (Reexam Control No. 95/000,451, hereinafter referred to as Reexam 3) patents.

In Reexam 1, the requester asserted that various references are pertinent to the issue of validity of the '542 patent under 35 U.S.C. §§ 102 and 103. Applicant notes for the Examiner on the attached Form PTO/SB/08 in the column for the Examiner's initials the references identified by the requester. References identified by the requester in Reexam 1 as being allegedly pertinent to the '542 patent are identified by the designation "Rex. 1."

In Reexam 3, the requester asserted that various references are pertinent to the issue of validity of the '050 patent under 35 U.S.C. §§ 102 and 103. Applicant notes for the Examiner on the attached Form PTO/SB/08 in the column for the Examiner's initials the references identified by the requester. References identified by the requester in Reexam 3 as being allegedly pertinent to the '050 patent are identified by the designation "Rex. 3."

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claims in the application and Applicant determines that the cited documents do not constitute "prior art" under United States law, Applicant reserves the right to present to the office the relevant facts and law regarding the appropriate status of such documents.


Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-3726.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: November 1, 2010

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